

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2002-57-EC - ORDER NO. 2003-490
AUGUST 8, 2003

IN RE: Mr. and Mrs. James Tarmann,)	ORDER DENYING
)	PETITION FOR
Complainants,)	RECONSIDERATION
)	AND/OR REHEARING
vs.)	AND PETITION FOR
)	RECONSIDERATION
Duke Power, BellSouth, and the Public)	AND/OR
Service Commission Staff,)	CLARIFICATION
)	
Respondents.)	
_____)	

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Petition for Reconsideration and/or Clarification filed by BellSouth Telecommunications, Inc. (BellSouth) and a Petition for Reconsideration and/or Rehearing filed by Duke Power n/k/a Duke Power, a division of Duke Energy Corporation (Duke). Both Petitions seek relief from Commission Order No. 2003-358 (Order). We have reviewed both BellSouth's and Duke's Petitions, and for the reasons set forth herein, we deny the relief requested in both Petitions.

BellSouth's Petition for Reconsideration and/or Clarification

In its Petition, BellSouth asks that the Commission reconsider its holding of paragraph 7, page 10 of Order No. 2003-358. BellSouth argues that the record contains no evidence to suggest that it is technically possible for BellSouth to institute construction or erosion control techniques that would keep its facilities buried at any

particular depth in light of the significant erosion problems that exist at the Tarmanns' property. Further, BellSouth asserts that nothing in the record indicates any affected landowners have or will grant BellSouth the right to institute construction or erosion control techniques on the land abutting the private road at issue in this proceeding. Next, BellSouth states that although it would prefer to place its facilities overhead, doing so is likely to affect the rights of persons who are not parties to this docket and to raise legal issues that are not addressed in the Commission's Order. BellSouth requests that the Commission reconsider and/or clarify its Order by amending the language on page 10 to read as follows:

In light of the unique facts of record in this proceeding, the Commission holds that Duke and BellSouth shall put their cables servicing the Tarmann property overhead, at their expense, if the Tarmanns are able to secure permission, in an appropriate form, from all necessary landowners for the placement of facilities necessary to do so. Or in the alternative, and at the election of Duke and/or BellSouth, the Commission holds that if the Tarmanns are able to secure permission, in an appropriate form, from all necessary landowners for Duke and/or BellSouth to do so, Duke and/or BellSouth shall, in good faith and without incurring unreasonable expense, institute reasonable construction or erosion control techniques within one foot of the edge of the road under which their cable lie and so as to make a good-faith attempt to maintain these cable at their required depth.

Duke's Petition for Reconsideration and/or Rehearing

Duke also takes issue with the language in paragraph 7 on page 10 of the Commission's Order. Duke makes numerous arguments in support of its Petition. First, Duke argues that the Commission's reference to Regulations 103-347, 103-360, and 103-391 of the South Carolina Code is an error because the Order does not contain an analysis or showing of any failure by Duke to comply with these regulations or how

Duke is required to maintain the area around its lines as the Commission has ordered. Next, Duke argues that the Commission erred by not taking proper notice in its Order of Duke's Approved Underground Distribution Installation Plan, which Duke relied on in its Answer to the Tarmanns' Complaint and which specifically requires that the Tarmanns be responsible for any additional expenses related to a "change in grade" on the Tarmanns' premises. Third, Duke asserts that the Commission failed to take proper notice of the evidence which shows that the Tarmanns chose underground service and the Tarmanns' testimony that an adjacent property owner along the easement to the Tarmanns' property objected to overhead service.

Duke's Petition also states that the Commission failed to take proper notice in its Order of the admissions, statements, deposition testimonies, testimonies, exhibits, legal positions, facts, summons/complaint and decision of the jury, in that certain legal action denominated as James A. Tarmann and Patricia M. Tarmann, Plaintiffs vs. Oakwood Mobile Homes, Inc. and Wayne Breedlove, Defendants, 96-CP-23-1652, Greenville County Court of Common Pleas and James A. Tarmann and Patricia M. Tarmann, Plaintiffs vs. Oakwood Mobile Homes, Inc., Defendant, 98-CP-23-880, Greenville County Court of Common Pleas, which Duke entered into evidence at the trial of this matter. Additionally, Duke argues the Commission failed to take notice of the testimony of Lynn E. Mathis regarding the Tarmanns' responsibility to properly maintain their property to control erosion, the cause of the erosion, and that Duke's and BellSouth's actions did not cause the erosion. Duke also asserts that the Commission failed to take proper notice in its Order of Barbara Yarbrough's testimony that the Tarmanns did not

own the property and the roadway that contain the easement to provide the electric service to the Tarmanns and thus the Tarmanns could not provide right-of-way to Duke for overhead service. In sum, Duke requests that the Commission, upon reconsideration, reverse the partial relief granted in paragraph 7 on page 10 of its Order.

The Tarmanns' Response

Regarding Duke's Petition, the Tarmanns stated that the Commission was correct in holding that 26 S.C. Code Ann. Regs. 103-391, 103-360, and 103-347 require Duke to maintain the lines that service the property. Next, regarding BellSouth's Petition, the Tarmanns argue that the Commission was correct in holding that 26 S.C. Code Ann. Regs. 103-630, 103-640, and 103-644 require BellSouth to maintain the lines that service the property. Finally, the Tarmanns state that the issue of acquisition of easements/rights-of-way was not an issue before the Commission and BellSouth and Duke do not need to acquire further easements or rights-of-way to properly maintain the lines that service the property.

Analysis

26 S.C. Code Ann. Regs. 103-630, 103-640, 103-644, 103-347, 103-360, and 103-391 require telecommunication and electric utilities to maintain their facilities. Utilities are to operate and maintain all of their facilities in a safe and efficient manner. Further, regarding the maintenance of facilities, the safety of persons and property are to be maintained. If facilities, including cables, are installed underground, then a utility has a responsibility to insure that the cables physical location is not a threat physically to the residential customer.

Duke and BellSouth have a legal responsibility to maintain their facilities. These facilities include cable which the utilities have placed underground to service a customer's residence. The maintenance of Duke's and BellSouth's lines includes insuring that the Company's lines are not exposed which in turn could pose a danger to persons who traverse the property where a utility's cable is located. A residential customer could trip and fall on an exposed line or a customer could experience an electrical shock due to exposed cable. Therefore, a utility's duty to the safety of residential customers should be a primary concern for all telecommunications and electric utilities.

Erosion problems do exist along the easement where the electrical and telephone lines servicing the Tarmanns' property are located; therefore, if necessary, Duke and BellSouth should institute construction or erosion control techniques to insure that the utility cable/lines servicing the Tarmann property remain buried. Finally, if Duke and BellSouth find that maintaining the cables underground cannot be done even by instituting construction or erosion control techniques, then Duke and BellSouth shall put their cables servicing the Tarmann property overhead. After all, utilities have a duty to provide their services in a safe and reliable manner.

IT IS THEREFORE ORDERED THAT:

1. Duke's and BellSouth's Petitions for Reconsideration are denied for the above-stated reasons.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Mignon L. Clyburn, Chairman

ATTEST:

Gary E. Walsh, Executive Director

(SEAL)